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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No.

2010-34

12 **MICHELLE NICOLE RAY**
13 **22762 Orense**
Mission Viejo, CA 92691
14 **Registered Nurse License No. 641983**

A C C U S A T I O N

15 Respondent.

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17 Complainant alleges:

18 **PARTIES**

19 1. Heidi J. Goodman (Complainant) brings this Accusation solely in her official capacity
20 as the Assistant Executive Officer of the Board of Registered Nursing, Department of Consumer
21 Affairs.

22 2. On or about August 2, 2004, the Board of Registered Nursing issued Registered
23 Nurse License Number 641983 to Michelle Nicole Ray (Respondent). The Registered Nurse
24 License was in full force and effect at all times relevant to the charges brought herein and will
25 expire on April 30, 2010, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

6. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

7. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division."

8. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

1 (a) Unprofessional conduct, which includes, but is not limited to, the
2 following:

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4 (f) Conviction of a felony or of any offense substantially related to the
5 qualifications, functions, and duties of a registered nurse, in which event the record of
6 the conviction shall be conclusive evidence thereof.

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8 9. Section 2762 of the Code states:

9 In addition to other acts constituting unprofessional conduct within the meaning
10 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
11 licensed under this chapter to do any of the following:

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13 (b) Use any controlled substance as defined in Division 10 (commencing with
14 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
15 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
16 dangerous or injurious to himself or herself, any other person, or the public or to the
17 extent that such use impairs his or her ability to conduct with safety to the public the
18 practice authorized by his or her license.

19 (c) Be convicted of a criminal offense involving the prescription, consumption,
20 or self-administration of any of the substances described in subdivisions (a) and (b) of
21 this section, or the possession of, or falsification of a record pertaining to, the
22 substances described in subdivision (a) of this section, in which event the record of
23 the conviction is conclusive evidence thereof.

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25 REGULATORY PROVISIONS

26 10. California Code of Regulations, title 16, section 1444, states:

27 A conviction or act shall be considered to be substantially related to the
28 qualifications, functions or duties of a registered nurse if to a substantial degree it
evidences the present or potential unfitness of a registered nurse to practice in a
manner consistent with the public health, safety, or welfare. Such convictions or acts
shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations
listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section
290 of the Penal Code.

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1 11. California Code of Regulations, Title 16, section 1445 states:

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3 (b) When considering the suspension or revocation of a license on the grounds
4 that a registered nurse has been convicted of a crime, the board, in evaluating
5 the rehabilitation of such person and his/her eligibility for a license will
6 consider the following criteria:

7 (1) Nature and severity of the act(s) or offense(s).

8 (2) Total criminal record.

9 (3) The time that has elapsed since commission of the act(s) or offense(s).

10 (4) Whether the licensee has complied with any terms of parole,
11 probation, restitution or any other sanctions lawfully imposed against the
12 licensee.

13 (5) If applicable, evidence of expungement proceedings pursuant to
14 Section 1203.4 of the Penal Code.

15 (6) Evidence, if any, of rehabilitation submitted by the licensee.

16 **COST RECOVERY**

17 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
18 administrative law judge to direct a licensee found to have committed a violation or violations of
19 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
20 enforcement of the case.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct - Possession of Controlled Substance 23 Paraphernalia on June 25, 2007)**

24 13. Respondent has subjected her license to disciplinary action under sections 492 and
25 2761, subdivision (a) of the Code in that on or about June 25, 2007, Respondent was found in
26 possession of a methamphetamine pipe, an act substantially related to the qualifications,
27 functions, and duties of a registered nurse. The circumstances are as follows:

28 a. On or about the afternoon of June 25, 2007, deputies from the Orange
County Sheriff's Department had detained Respondent and a male companion at a gas station
pursuant to a report from an informant. Respondent was asked to exit the vehicle in which she

1 was a passenger. As she approached the rear of the vehicle, she leaned over to extinguish a lit
2 cigarette. A glass pipe, commonly used to smoke methamphetamine, fell out of Respondent's
3 dress to the concrete. She was immediately arrested for possession of controlled substance
4 paraphernalia.

5 b. As a result of the arrest, on or about July 17, 2007, criminal charges were
6 filed in the matter of *People of the State of California v. Michelle Nicole Ray*, in Orange County
7 Superior Court, case no. 07SM02698. After failing to appear for the arraignment set for August
8 22, 2007, a bench warrant was issued for Respondent's arrest. On or about May 28, 2008,
9 Respondent pled guilty to violating Health and Safety Code section 11364, possession of
10 controlled substance paraphernalia. Entry of judgment was deferred and Respondent was ordered
11 to enroll in a drug program pursuant to Penal Code section 1000. A hearing on the dismissal of
12 the judgment is set for December 18, 2009.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Public Intoxication on July 22, 2007)**

15 14. Respondent has subjected her license to disciplinary action under section 2762,
16 subdivision (b) of the Code in that on or about July 22, 2007, Respondent was under the influence
17 of alcohol to an extent or in a manner dangerous or injurious to herself and the public and is
18 substantially related to the qualifications, functions, and duties of a registered nurse. The
19 circumstances are that on or about the evening of July 22, 2007, an officer with the Butte County
20 Department of Parks and Recreation was alerted by a passerby that a highly intoxicated female
21 was attempting to leave a marina parking lot in a vehicle. The officer found Respondent next to
22 her vehicle crying uncontrollably. The officer noted that Respondent had a strong odor of an
23 alcoholic beverage on her breath; her speech was slurred and she was having difficulty standing.
24 The officer contacted a friend at a phone number provided by Respondent. The friend said she
25 was not willing to pick up Respondent. Respondent submitted to a PAS test which resulted in a
26 BAC of 0.17 percent. Respondent was placed under arrest for public intoxication. During
27 transport, the officer noted that Respondent's breathing became rapid and irregular. She was
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1 taken to a local hospital and then transported to jail where she provided two more breath samples,
2 resulting in readings of 0.14 percent BAC.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(January 22, 2009 Criminal Conviction for Public Intoxication**

5 **& Resisting Arrest on January 20, 2009)**

6 15. Respondent has subjected her license to disciplinary action under sections 490 and
7 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially
8 related to the qualifications, functions, and duties of a registered nurse. The circumstances are as
9 follows:

10 a. On or about January 22, 2009, in a criminal proceeding entitled *People of*
11 *the State of California v. Michelle Nicole Ray*, in Orange County Superior Court, case number
12 09SM00395, Respondent was convicted on her plea of guilty of violating Penal Code section 148,
13 subdivision (a), willfully resisting and obstructing a peace officer; and Penal Code section 647,
14 subdivision (f), public intoxication (under the influence of a combination of alcohol and toluene¹),
15 misdemeanors.

16 b. As a result of the conviction, on or about January 22, 2009, Respondent
17 was sentenced to three days in the county jail, with credit for three days, and fees, fines, and
18 restitution in the amount of \$200.

19 c. The facts that led to the conviction were that on or about the evening of
20 January 20, 2009, deputies from the Orange County Sheriff's Department responded to a citizen's
21 complaint about an intoxicated female (Respondent) knocking on doors in a residential
22 neighborhood. Upon arrival, the deputies contacted Respondent who was described as barefoot,
23 not able to stand still, and swaying back and forth while she spoke. Respondent had a strong odor
24 of an alcoholic beverage coming from her person; she was pale and her eyes were bloodshot. Her

25 ¹ Toluene is a common solvent used to dissolve paints, paint thinners, silicone sealants,
26 etc. Toluene can be inhaled for its intoxicating effects. Low to moderate levels can cause
27 tiredness, confusion, weakness, drunken-type actions, memory loss, nausea, loss of appetite, and
28 inhaling high levels of toluene in a short time may cause light-headedness, nausea, or sleepiness.
It can also cause unconsciousness, and even death.

voice was slurred and she was laughing when answering questions. Respondent submitted to a preliminary alcohol screening (PAS) test which measured a 0.216 percent blood alcohol content (BAC). Respondent's mother was called and she refused to assume custody of Respondent. Respondent was arrested for public intoxication and transported to the detention facility. While in custody, Respondent slipped her left hand free from the handcuffs and ran out of the front door. She was apprehended approximately 100 yards from the facility and transported to the Orange County Jail.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Under the Influence of Alcohol & Toluene)

16. Respondent has subjected her license to disciplinary action under section 2762, subdivision (b) of the Code in that on or about January 20, 2009, as described in paragraph 15, above, Respondent was under the combined influence of alcohol and toluene, to an extent or in a manner dangerous or injurious to herself and the public and is substantially related to the qualifications, functions, and duties of a registered nurse.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Conviction of an Alcohol-Related Criminal Offense)

17. Respondent has subjected her license to disciplinary action under section 2762, subdivision (c) of the Code in that on or about January 20, 2009, as described in paragraph 15, above, Respondent was convicted of public intoxication and being under the combined influence of alcohol and toluene, in violation of Penal Code section 647, subdivision (f) to the extent that she was unable to care for herself. Such unprofessional conduct is substantially related to the qualifications, functions, and duties of a registered nurse.

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3 **PRAYER**

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board of Registered Nursing issue a decision:

6 1. Revoking or suspending Registered Nurse License Number 641983, issued to
7 Michelle Nicole Ray;

8 2. Ordering Michelle Nicole Ray to pay the Board of Registered Nursing the reasonable
9 costs of the investigation and enforcement of this case, pursuant to Business and Professions
10 Code section 125.3;

11 3. Taking such other and further action as deemed necessary and proper.

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15 DATED: 7/23/09

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Heidi J. Goodman
Assistant Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant